

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY SHADE,

No. C 08-3471 SI

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

v.

DANIEL PATRICK GORMAN, *et al.*,

Defendants.

On December 12, 2008, the Court held a hearing on plaintiff's motion for a preliminary injunction. Plaintiff seeks a preliminary injunction enjoining defendants from exhibiting or offering for distribution a documentary film entitled *American Hero*. To obtain the relief sought, plaintiff must demonstrate "either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in favor of the moving party." *Bank Julius Baer & Co. Ltd. v. WikiLeaks*, 535 F. Supp. 2d 980, 983 (N.D. Cal. 2008).

The Court finds that plaintiff is not entitled to a preliminary injunction because there are numerous disputed factual and legal issues going to the merits. The parties dispute, *inter alia*, whether plaintiff's copyright registrations are valid, whether the Congressional documentary that defendant Gorman prepared for plaintiff (and which plaintiff claims is infringed by *American Hero*) was a "work for hire," and whether *American Hero* is a fair use under the copyright laws. In light of these many disputes, plaintiff has not demonstrated probable success on the merits. Even if serious questions are raised, plaintiff has not shown that the balance of hardships tips sharply in his favor. Plaintiff acknowledges that he has no present intention of marketing his work. Although plaintiff is concerned about protecting this own identity and the identities of certain individuals shown in the materials, there

1 is nothing in the record to show that defendant's use¹ of the materials at issue would jeopardize anyone's
2 security.

3 Accordingly, the Court DENIES plaintiff's motion for a preliminary injunction. (Docket No.
4 7). The Court will issue a separate order regarding defendants' motion to dismiss the complaint.

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6 **IT IS SO ORDERED.**

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8 Dated: January 26, 2009



SUSAN ILLSTON
United States District Judge

United States District Court
For the Northern District of California

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¹ The Court also notes that according to the parties' papers, there are no scheduled upcoming exhibitions of *American Hero*.